



INTERIOR BOARD OF INDIAN APPEALS

Minneapolis American Indian Center v. Minneapolis Area Director,
Bureau of Indian Affairs

26 IBIA 210 (09/07/1994)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MINNEAPOLIS AMERICAN INDIAN
CENTER,

Appellant

v.

MINNEAPOLIS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,

Appellee

: Order Docketing Appeal and
: Affirming Decision

:
:

: Docket No. IBIA 94-174-A

:
:

: September 7, 1994

Appellant Minneapolis American Indian Center seeks review of a July 29, 1994, decision of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). The Board of Indian Appeals (Board) received appellant's notice of appeal and statement of reasons, with accompanying documents, on August 25, 1994. The notice of appeal indicates that copies were served on the Area Director. For the reasons discussed below, the Board affirms the Area Director's decision. 1/

The Area Director's decision states that appellant's application was not reviewed because it did not include 'ritten assurances that the organization meets the definition of Indian organization at 25 CFR 23.2. Such assurances were required by 25 CFR 23.33(b)(3) and Part III.C(3) of the program announcement. The Area Director indicated that appellant's Articles of Incorporation and narrative did not address this requirement.

Section 23.33(b) provides that "[m]andatory application requirements for Indian organization applicants shall include: * * * (3) Written assurances that the organization meets the definition of Indian organization at §23.2." Section 23.2 defines Indian organization "solely for purposes of eligibility for grants under * * * this part, [as] any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians."

1/ Both the Area Director's decision and the program announcement informed appellant that it could file a statement of reasons in support of its appeal either with the notice of appeal or within 30 days after the notice of appeal was filed. See Part III.G. The Board concludes that appellant's statement of reasons, which was included with its notice of appeal, is the filing to which appellant was entitled under the program announcement, and that this appeal can be decided on the materials presently before it.

Appellant contends that the program announcement did not define "written assurances," but that it believes its application included ample written assurances and documentation to show that it meets the definition of Indian organization. Appellant has submitted copies of those documents included in its application which it alleges make this showing. Appellant argues that because its Articles of Incorporation and Certificate of Restated Articles of Incorporation show that the Board of Directors is elected by the Indian community in the Minneapolis metropolitan area, it is therefore an Indian-controlled organization. It asserts that this fact was repeated on page 19 of the application when it stated that elections are held for the Board of Directors. Appellant further contends that its use of the term Indian organization on Standard Form (SF) 424 shows that its "meaning for the term was consistent with the definition in the Code of Federal Regulations, in the same way that our meaning for other key terms used in our application was consistent with the Federal definition."

The Board has carefully read appellant's Articles of Incorporation and Restated Articles of Incorporation, which were included with its statement of reasons. Nothing in these documents describes the ownership or control of the organization, or defines its membership. The statement most in appellant's favor is that the incorporators shall serve as officers of the organization "[u]ntil such time as an open election for permanent officers is held by the greater metro Indian community of Minneapolis." Although this statement suggests that the organization is Indian controlled, in the absence of any other indication of control and/or membership, the Board concludes that the Area Director did not commit reversible error by finding that the statement did not provide sufficient information to make a determination that appellant met the requirement of 25 CFR 23.33(b).

Appellant's identification of itself as an Indian organization on the SF 424 does not provide a basis for finding that it met the requirement of section 23.33(b). Such a conclusory statement does not provide any information upon which BIA can base an independent determination.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Minneapolis Area Director's July 29, 1994, decision is docketed, and the decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge